IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.81/1999

1. Special Land Acquisition Officer (South Goa)
   Konkan Railway Corporation Limited,
   Amey Guest House, Davorlim Road,
   P.O. Navelim, Salcete, Goa 403 707.

2. Chief Engineer,
   Konkan Railway Corporation Ltd;
   Rawanfond, near Margao Railway Station,
   Margao, Goa. ..... Appellants.

V/s.

1. Filipe Neri Piedade Correia,
   R/o. Borda- Margao- Goa.

2. Antonio de Jesus Joao Correia,
   R/o. Borda, Margao, Goa.

3. Francisco Xavier Graca Correia,
   R/o. Borda, Margao, Goa. ..... Respondents.

Mr. Emerico Afonso, Advocate for the appellants.

Mr. M.B. D'Costa, Senior Advocate with Mr. J.A. Lobo, Advocate for the respondents.

CORAM : A.P. LAVANDE, J.

Date of reserving the Judgment :
18th February, 2005.

Date of pronouncing the Judgment:
24th February, 2005.

J U D G M E N T :

By this appeal, the appellants assail the Judgment and Award dated 15.3.1999, passed by the Addl. District Judge, Margao in Land Acquisition Case No.20/1996, partly allowing the reference, and enhancing the market value of the acquired land from Rs.13/- to Rs.88/- per sq. metre.

2. By Notification dated 8.8.1991, issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act') , an area of 1070 sq. metres of Survey No.1/6 of Village Duncolim belonging to the respondents was acquired by the Government for Konkan Railway Corporation Ltd. Before the Land Acquisition Officer, the respondents claimed Rs.250/- per sq. metre. The Land Acquisition Officer awarded Rs.13/- per sq. metre. Being dis-satisfied with the compensation awarded, reference was sought by the respondents herein, claiming compensation of Rs.250/- per sq. metre. Before the reference Court, the respondents examined three witnesses, namely Anton de Juses Joao de Correia (AW.1); Antonio Jose Rebello (AW.2) and Ernesto Moniz (AW.3). The appellants examined one witness, namely Espirito Furtado (RW.1). The reference Court, after considering the evidence led by the parties, enhanced the rate to Rs.88/- per sq. metre and also awarded the statutory benefits under the Act.

3. The only point which arises for determination in this appeal is, whether the market rate of Rs.88/- per sq. metre fixed by the reference Court is justified and, if not, what is the market rate of the acquired land as on the date of Section 4 Notification i.e. 8.8.1991 ?

4. Mr. Afonso, learned Counsel appearing for the appellants has submitted that the reference Court ought to have rejected the reference since the respondents had failed to prove that the market rate was Rs.88/- per sq. metre of the acquired land as on the date of Section 4 Notification. According to the learned Counsel, the reference Court committed a gross error in relying upon the Sale Deed dated 21/5/1990, relied upon by the respondents, inasmuch as the sale deed plot is not comparable to the acquired land. It is further submitted that the acquired land had no building potential and, therefore, the reference Court was absolutely not justified in placing reliance on the said sale deed and fixing the market rate of the acquired land on the basis of the consideration mentioned in the said sale deed. He further submitted that the sale deed plot was situated at Seraulim and the acquired land is situated in Village Duncolim. The learned Counsel further submitted that the approach of the reference Court is contrary to the settled principles, governing the fixation of price of the acquired land and, therefore, the rate fixed by the reference Court does not represent the market rate of the acquired land as on the date of Section 4 Notification.

In support of his submission, the learned Counsel relied upon the following Judgments :

(1) ***Chimanlal Hargovinddas vs. Spl. Land Acquisition Officer, Poona and anr. ((1988) 3 SCC 751)***

(2) Joginder Singh Saini and ors. vs. State of Haryana and anr. ((1990) 3 SCC 276);

(3) ***K.S. Shivadevamma and ors. vs. Assistant Commissioner and Land Acquisition Officer and anr.*** ((1996) 2 SCC 62);

(4) ***Basavva (Smt.) and ors. vs. Spl. Land Acquisition Officer and ors.*** ((1996) 9 SCC 640);

(5) ***Land Acquisition Officer vs. B. Vijender Reddy and ors.*** ((2001) 10 SCC 669);

(6) ***Land Acqusiition Officer-cum-DSWO., A.P. vs. B.V. Reddy and Son***

(7) ***Madhusadan R. Mahambre vs. Special Land Acquisition Officer (North), Mapusa Goa and anr.*** ((2002) (3) Bom. L.R. 931)

(8) ***Kasturi and ors. vs. State of Haryana*** ((2003) 1 SCC 354);

(9) ***Ghaziabad Development Authority vs. Anoop Singh and anr. (*** (2003) 2 SCC 484;

(10) ***H.P. Housing Board vs. Bharat S. Negi and ors.*** ((2004) 2 SCC 184;

(11) ***State of Goa, through the Dy. Collector, (LA) & Land Acquisition Officer, Panaji, Goa & anr. vs. Prabhakar S. Naik***

Pankar ((2004 (3) All MR 248).

5. Per contra, Mr. D'Costa, learned Senior Counsel appearing for the respondents submitted that there is absolutely no justification for reducing the market rate. The learned Counsel submitted that the reference Court has made unwarranted deductions while fixing the market rate and actually higher market value should have been fixed, but since no appeal or cross objections have been filed by the respondents, the respondents are not in a position to insist on higher market rate. The learned Counsel further submitted that the market rate fixed by the reference Court is fair and proper and, therefore, no interference is called for by this Court against the impugned Judgment and Order. The learned Counsel relied upon the following Judgment : ***H.P. Housing Board vs. Bharat S. Negi and ors.*** (2004(2) SCC 184).

6. I have considered the submissions made by the learned Counsel for the parties. I have also gone through the Judgments cited by the learned Counsel. From the perusal of the evidence on record, it is established that the acquired land is a strip of land, near the railway track; the acquired land is sandy soil and the acquired land touches Betabatim road. The reference Court has discarded the evidence of the Expert Shri Ernesto Moniz (AW.3) and I do not find any reason to take a contrary view. Relying upon the valuation done by him, the valuer had

fixed the market rate of the acquired at Rs.268/- per sq. metre. But having regard to his evidence, it cannot be said that the rate of the acquired land fixed is on sound basis. In so far as the evidence of Anton de Jusus Joao de Correia (AW.1) is concerned, he has only described about the nature and location of the land. He has also relied upon the sale deed dated 21.5.1990 by which a small plot of land at Seraulim was sold at the rate of Rs.300/- per sq. metre. He has also stated that the acquired land is at the level of the road; Church is about 200 to 250 metres away from the acquired land. He has admitted the suggestion put to him by the appellants herein that even after acquisition of the property, he can use the remaining portion for construction purpose. He has also admitted that there is a mundkarial house in the unacquired portion of his property and that there were several fruit bearing trees in the acquired land. He has further admitted that the plot in the sale deed is closer to Margao city compared to the acquired land by about 350 metres. Antonio Jose Rebello (AW.2) who was the developer of the property, a plot of which was sold by sale deed dated 21.5.1990, was also a Confirming Party to the sale deed by which a plot of land admeasuring 557 sq. metres situated at Seraulim was sold at the rate of Rs.300/- per sq. metre. He has produced a certified copy of the said sale deed. According to him, the said plot is sandy and is at the same level of the road and is about 10 metres from the public road. He has further deposed that the acquired land is similar in nature to the plot sold by

the said sale deed. According to him, the acquired land is about 500 metres from the said plot and there are facilities of electricity, water, telephone, shops, etc., near the acquired land. In so far as the evidence of Ernesto Moniz (AW.3) is concerned, it is not necessary to refer to the same since the reference Court has rightly not relied upon his evidence and I am of the opinion that the reference Court is fully justified in not placing reliance on his testimony. In so far as the evidence of RW.1 is concerned, he has only produced the plan of the acquired land (Exhibit RW.1/A) and deposed about the location of the acquired land.

7. From the evidence brought on record before the reference Court, it is established that the acquired land is sandy and is situated at a distance of about 500 metres away from the plot which was sold by sale deed dated 21.5.1990. It is also established that the nature of the land acquired and that of the sale deed plot is the same being sandy. From the suggestion put to AW.1 Anton Correia by the appellants herein, it is clear that the acquired land has building potential and the same is not seriously disputed by the appellants herein in the course of the evidence before the reference Court. That being the position, reliance can be placed on the sale deed dated 21.5.1990 which has been produced on record by the respondents herein. The said sale deed is dated 21.5.1990 and the Notification under Section 4 has been published on 8.8.1991. Normally increase of 10 % per annum is to be considered

while fixing the market rate. But in the present case, no other evidence has been led by the respondents herein about the increase in price from the date of sale deed till the date of publication of Section 4 Notification. I am in agreement with the submission made by the learned Counsel for the appellants that based on the solitary sale deed relied upon by the respondents, increase of 10 % per year is not justified. The respondents have also not proved by leading any cogent evidence that there has been any development in the area so as to justify 10 % rise in the price of land, every year. Being so, the market rate of the acquired land at the time of publication of Section 4 Notification, can be taken as Rs.300/- per sq. metre. Since the acquired land is a larger area, as compared to the plot involved in the sale deed, it would be appropriate to deduct 50 % towards the development charges. Admittedly, the plot in the sale deed relied upon by the respondents is in Seraulim Village whereas the land acquired is in Village Duncolim and the acquired land is closer to Margao, which is an important commercial city of Goa and on this count also further deduction is warranted. It is established that the acquired land is closer to railway track and there is a mundkarial house existing in the unacquired portion of property. The evidence brought on record does not establish that there has been substantial development in Village Duncolim prior to Section 4 Notification. I am unable to accept the submission of the leaned Senior Counsel appearing for the respondents that mere fact that there is a mundkarial house in the

unacquired portion of the property is irrelevant for the purpose of deciding the market rate of the acquired land. If the respondents were to develop the entire land by sub-dividing into plots, or sell the entire plot of land, including the acquired land, the presence of the mundkarial house in the unacquired portion would be definitely a minus factor. On all these counts, further deduction of 40 % would be justified. Admittedly, the land acquired is not a regular plot, but only a strip of land, having a breadth of about 10 metres. On this count, further deduction of 15 % would be appropriate. As such, the total deductions work out to 55 %. Accordingly, the market rate of the acquired land as on the date of Section 4 Notification can be fixed at Rs. 67.50 which is rounded up to Rs.68/- per sq. metre.

8. I am unable to accept the approach of the reference Court in fixing the market rate of the acquired land at Rs.88/- per sq. metre. The reference Court has taken price of the sale deed at Rs.210/- per sq. metre on the ground that Rs.90/- per sq. metre was payable to the developer. I am unable to accept this line of approach, because ultimately the price paid by the purchaser is the market rate of the land which is sold and particularly having regard to the fact that the plot was sold after it was developed by the developer and Rs.90/- per sq. metre was development cost. However, I am unable to accept the deductions made by the reference Court while fixing the market rate of the acquired

land. The Land Acquisition Officer had awarded Rs.47,875/- towards value of trees in addition to Rs.4,680-03 towards value of timber. These amounts were awarded in addition to the market value of the acquired land. Obviously, the amount of Rs.47,875/- paid to the respondents towards value of trees has to be adjusted in the market value of the acquired land.

9. In view of the above discussion, the market rate of the acquired land, as on the date of publication of Section 4 Notification is fixed at Rs.68/- per sq. metre.

10. In the result, therefore, the appeal is partly allowed and the market rate of the acquired land is fixed at Rs.68/- per sq. metre. Needless to mention that the respondents will be entitled to all the statutory benefits under the Act. Having regard to the facts and circumstances of the case, the parties to bear their own costs.

A.P. LAVANDE, J.

ssm.